

Decision No. C98-1057

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 98A-319T

IN THE MATTER OF PETITION OF E*SPIRE COMMUNICATIONS, INC. AND
ACSI LOCAL SWITCHED SERVICES FOR ARBITRATION OF AN AMENDMENT OF
AN INTERCONNECTION AGREEMENT WITH U S WEST COMMUNICATIONS, INC.
PURSUANT TO SECTION 252(B) OF THE TELECOMMUNICATIONS ACT OF 1996.

INITIAL COMMISSION DECISION

Mailed Date: October 29, 1998
Adopted Date: October 29, 1998

Appearances:

Carol Smith-Rising, Esq., Santa Fe, New Mexico; Brad E. Mutschelknaus, Esq., Washington, D.C., Pro Hac Vice; and Edward A. Yorkgitis, Jr., Washington, D.C., Pro Hac Vice for E*Spire Communications, Inc., and ACSI Local Switched Services; and

Kathryn E. Ford, Esq., and Kevin Pernell, Esq., Denver, Colorado, for U S WEST Communications, Inc.

I. BY THE COMMISSION

A. Statement

1. This is an arbitration proceeding under § 252 of the Communications Act of 1934 ("Act"),¹ as amended by the Telecommunications Act of 1996 ("1996 Act"),² and under this Commission's rules governing arbitration, 4 Code of Colorado Regula-

¹ 47 U.S.C. §§ 151 et seq.

² Pub. L. No. 104-104, 110 Stat. 56.

tions ("CCR") 723-46. Petitioners E*Spire Communications, Inc., and ACSI Local Switched Services, Inc., doing business as E*Spire Communications, Inc. (collectively "E*Spire"), filed their Petition for Arbitration with this Commission on July 14, 1998. The petition concerns E*Spire's request to interconnect its frame relay services ("FRS") network to the FRS network of U S WEST Communications, Inc. ("U S WEST"). E*Spire gave notice of the arbitration on July 14, 1998. U S WEST filed its response to the petition on August 10, 1998.

2. On August 14, 1998, E*Spire filed a Motion for Summary Decision which motion was denied by Decision Nos. R98-329-I and R98-884-I. The arbitration was scheduled to be held October 7 and 8, 1998 at 9:00 a.m. in a Commission hearing room in Denver, Colorado.

3. At the assigned place and time an Administrative Law Judge ("ALJ") called the matter for hearing. During the course of the hearing Exhibits 1, 1A, 1B, 2, 2A, 2B, 2C, 2D, 3, 4, 5, 5A, 16, 17, 18, 19, 20, and 21 were identified, offered, and admitted into evidence.³ Exhibits 6 through 15 were various Commission decisions, records of this Commission, and tariffs on file with this Commission of which administrative notice was taken.

³ Exhibit 16 was a demonstrative exhibit.

4. During the hearing the ALJ found that U S WEST's responses to certain discovery had been evasive and nonresponsive. As a remedy, he ordered U S WEST to file, as a late-filed exhibit, the cost studies it had prepared in support of its frame relay tariff. The late-filed exhibit was filed on October 13, 1998. The ALJ further authorized E*Spire to comment on this late-filed exhibit in its closing statement of position.

5. At the conclusion of the hearing the ALJ ordered the parties to provide a transcript for the Commission and apportioned the cost of the transcript 50 percent to the petitioners and 50 percent to the respondent.¹ Closing statements of position were ordered to be filed no later than October 19, 1998. Subsequently the ALJ orally granted a one-day extension of time until October 20, 1998 to file closing statements. Timely statements were filed by both E*Spire and U S WEST.

6. Under the 1996 Act the Commission must make a determination in this proceeding no later than November 4, 1998, which is nine months after U S WEST received a request for negotiation from E*Spire. Because of the deadline for decision under the 1996 Act, the Commission finds that due and timely execution of its functions imperatively and unavoidably require that the recommended decision of the ALJ be omitted and that the Commission make the initial decision in this case.

¹ See 4 CCR 723-46-6.5.

B. Findings of Fact

1. E•Spire holds a certificate of public convenience and necessity to provide competitive telecommunications services in Colorado. It currently operates local fiber optic networks in Colorado Springs, and it has purchased and installed a Lucent Technologies 5ESS switch in Denver. E•Spire also provides local exchange services in Colorado via the resale of U S WEST's wholesale products. It has recently installed a frame relay switch in Colorado Springs.

2. This proceeding concerns the frame relay network's ("FRN") of U S WEST and E•Spire. A FRN is often referred to as a frame relay "cloud". The cloud is actually a data network constructed of frame relay switches connected together by a series of high speed trunk facilities. The FRNs of U S WEST and E•Spire connect to their customers in essentially the same manner. The customers access the FRN by purchasing a user-to-network interface ("UNI") and an access link or access line. The customer designates the locations to be connected over the FRN by a private virtual circuit ("PVC"). A PVC is not a dedicated connection for the exclusive use of an end user, which is what a private line would be. Rather, the PVC is a series of software commands located in the switches which guarantees a customer a connection on demand between the stated points. When the customer is not using the PVC, the capacity in the FRN is not being used

and may be used by other customers. This gives the FRN one of its distinctive characteristics, namely, the ability to allow customers to send "bursty" data traffic beyond the guaranteed capacity if there is excess capacity on the network.

3. The FRN of U S WEST is separate and apart from the switched voice network. It is a packet network which transmits customer data in discrete packets across multiple transmission paths, unlike a voice circuit which is a continuous connection over a given pathway.³ A customer on an FRN must specify both ends of the desired data connection in order for the service to be provisioned. Except for the specified connection points, a customer on a FRN will not be able to communicate with any other customer on the FRN. Most PVCs on the FRNs are between the same entities or affiliates. However, if two distinct entities wish to interconnect via the FRN this can be accommodated, although it is not common.

4. U S WEST has FRNs in both LATAs in Colorado. However, it does not provide interLATA service. E•Spire currently has a frame relay switch located in Colorado Springs. E•Spire desires to use this switch to provide frame relay services to end user customers both on an intraLATA and an interLATA basis.

³ Of course, the given pathway for a voice connection may change from call to call; however, for the duration of the call the pathway does not change.

5. The FRNs of U S WEST and E*Spire are largely equivalent in terms of functionality, types of facilities deployed, and architecture. There is no technical barrier to interconnecting the two networks. Interconnection between the two networks would require a network-to-network interface ("NNI") port at each carrier's frame relay switch, with an NNI connection for the transport of data between the two NNI ports. The locations which would be connected by the PVCs would have to be specified by assigning each location a Data Link Connection Identifier ("DLCI"), which would require a one-time software programming change. This takes less than ten minutes. Once the addresses are specified, the NNI ports provisioned, and a transport medium established between the two NNI ports, an end user on U S WEST's network would have a PVC with an end user on the E*Spire FRN.⁶

C. Discussion

1. E*Spire's position in this proceeding is fairly straightforward. It seeks to have the interconnection between its FRN and U S WEST's FRN treated the same as an interconnection between U S WEST's voice network and a competitive local exchange

⁶ As noted earlier, there would also need to be a PVC from the NNI to the UNI, and an access line from the NNI to the customer location. Also, there is certain customer premises equipment needed for frame relay communication that is not at issue in this proceeding.

carrier ("CLEC") voice network. Interconnection would be at Total Element Long Run Incremental Cost-based rates. Under E*Spire's view, it and U S WEST would split the cost of the transport element connecting the NNI ports. E*Spire would pay for its NNI port, and U S WEST would pay for its NNI port. Each party would provide their own PVC from the frame relay switch to the end location.⁷ Concerning reciprocal compensation for the transport and termination of local traffic, E*Spire suggests that a bill and keep approach is appropriate given the bidirectional and bursty nature of the exchange of data traffic over dedicated PVCs and the difficulty this presents for measurement. It suggests that if bill and keep is unacceptable, then there should be some transport and termination charge based on incremental costs. E*Spire opposes a separate trunking requirement for intraLATA and interLATA traffic. It suggests using the ratio of the number of local PVCs divided by the total number of PVCs on a given transport facility.

2. U S WEST suggests that FRNs are nothing like voice networks. Rather, in U S WEST's view they are private networks, sort of an evolution of private lines. U S WEST suggests that the proper model for viewing interconnection of these private networks is contained in its tariffs. The tariffs embody the

⁷ For interLATA PVCs, E*Spire suggests that it will compensate U S WEST for U S WEST's PVC.

view that U S WEST will connect two private networks, but not at U S WEST's expense. That is, a network seeking to connect to U S WEST's FRN would be required to pay 100 percent of the transport medium connecting the two NNI ports. In addition, the outside network seeking connection would be required to pay for the NNI port on U S WEST's frame relay switch and for the PVCs running to the end customer.

3. E*Spire supports its requested relief by directing this Commission's attention to several decisions of the Federal Communications Commission ("FCC"). First, E*Spire puts forth a recent Memorandum, Opinion, and Order released August 7, 1998 by the FCC ("706 Order").¹ E*Spire notes that in the 706 Order the FCC considered the question of whether the packet switched networks of incumbent local exchange carriers ("ILECs") such as U S WEST are subject to the interconnection obligations under § 251(c)(2) of the Act. The FCC concluded that these advanced services were telecommunications services, and not information services. Further, the FCC noted that telephone exchange service includes comparable service by which a subscriber can originate and terminate a telecommunications service, not limited to voice. It rejected U S WEST's contention that telephone exchange service

¹ In the Matter of Deployment of Wireline Services Offering Advanced Communications Capability, CC Dockets Nos. 98-147, 98-26, et al.

referred only to circuit switched voice telephone service. The FCC thus held that ILECs were subject to the interconnection requirements of both §§ 251(a) and 251(c)(2) of the Act with respect to their packet-switched networks.

4. The 706 Order did not explicitly refer to frame relay networks in its discussion of advanced services. E*Spire suggests that this Commission refer to a prior FCC decision which discussed the question of treatment of frame relay services. In particular, Exhibit 12 in this proceeding is a decision of the FCC⁹ wherein it determined that frame relay service is a basic service and not an enhanced service. The FCC required all facilities-based common carriers providing it to provide it pursuant to tariff. E*Spire concludes that the net result of these two FCC decisions is that frame relay services are subject to § 251(c)(2) of the 1996 Act, requiring among other things, cost-based rates for interconnection and reciprocal compensation for the exchange of traffic.

5. U S WEST responds to this argument by noting that frame relay services were not the subject of the 706 Order and are different in some respects from the services discussed in that order. U S WEST reminds the Commission that the Independent

⁹ In the matter of Independent Data Communications Manufacturers Association, Inc., 10 FCC RCD No. 26 (1995) ("Independent Data Order").

Data Order of the FCC predates the 1996 Act and the provisions requiring interconnection which E•Spire seeks to utilize. U S WEST suggests that the pre-1996 Act case did not envision the type of interconnection requirements and pricing requirements which would be encompassed in the future, and cannot apply to this situation. It insists that FRNs are private networks, and the 1996 Act deals with the interconnection of public networks.

6. The Commission finds the logic and arguments of E•Spire persuasive as to the import and effect of the 706 Order and the Independent Data Order. The FRN of U S WEST is a publicly offered network of advanced telecommunications services. Interconnection of the FRNs of E•Spire and U S WEST should be accomplished in accordance with § 251(c)(2) of the Act.¹⁰ To simply require E•Spire to purchase retail NNI services out of U S WEST's tariff would completely ignore E•Spire's status as a CLEC. It would preclude carrier-to-carrier interconnection as envisioned by the 1996 Act. As a CLEC, E•Spire is entitled to utilize whatever provisions of the 1996 Act it deems appropriate, not just those suggested by U S WEST.

¹⁰ U S WEST admitted in pleadings in this proceeding and conceded at hearing that the 706 Order mandates this; yet, it has argued otherwise in its posthearing statement of position.

7. The above is consistent with the FCC's 706 Order and the Independent Data Order. Adopting U S WEST's version of this proceeding could only be done by carving out exceptions to those two orders, which the FCC has declined to do. We also decline.

8. Having determined that interconnection must be accomplished under § 251(c) of the Act, the Commission is bound to set the rates and conditions in accordance with that section and § 252(d) of the Act. That latter section requires that interconnection rates be cost based, non-discriminatory, and may include a reasonable profit.

9. U S WEST suggests that, in the event § 251(c) applies to FRS, its existing tariff rates satisfy the conditions. U S WEST also notes that E*Spire produced no cost studies, and suggests that the cost studies supplied by U S WEST as a late-filed exhibit are unreliable.

10. E*Spire agrees that no cost studies sufficient to support a finding are contained in the record. It proposes a surrogate pricing system using prices previously established by this Commission in Docket No. 96S-331T. It suggests sharing equally the costs of an intraLATA interconnection, each party paying for its own NNI ports. For interLATA traffic, E*Spire would compensate U S WEST for its NNI port, using the trunk port charge adopted in Docket No. 96S-331T. Also for interLATA traf-

fic, E•Spire would compensate U S WEST for transport between the switches using the UNE rates for DS1 and DS3 transport from Docket No. 96S-331T.

11. For intraLATA traffic, E•Spire suggests that each party would bear its own costs to establish DLCIs. For interLATA PVCs, E•Spire would compensate U S WEST at a \$10, one-time charge which is based on one-half of U S WEST's non-recurring "additional PVC" charge from its frame relay tariff.

12. As noted previously, E•Spire suggests that bill and keep is an appropriate reciprocal compensation scheme for the transport and termination of local frame relay traffic carried over intraLATA PVCs. For interLATA PVCs, E•Spire suggests that the U S WEST end user be charged for the U S WEST end user access link plus the U S WEST UNI port and access to U S WEST's network.

13. For the most part the Commission agrees with the E•Spire proposal to use surrogate prices developed from the prices set by the Commission in Docket No. 96S-331T. However, the E•Spire proposal that combined interLATA and intraLATA trunking be permitted cannot be allowed. This Commission has consistently required separate trunking in the voice arena to preclude U S WEST from carrying any interLATA traffic. There must be separate trunks for interLATA and intraLATA traffic between the frame relay switches.

14. Thus for the intraLATA trunks, the parties should share the costs of interconnection equally, using the UNE rates for DS1 and DS3 transport determined in Docket No. 96S-331T. For the interLATA connection, E*Spire must pay 100 percent at the UNE rates for DS1 and DS3 transport set in Docket No. 96S-331T. E*Spire must also pay for the NNI port on U S WEST's switch.

15. Concerning the DLCIs, the party establishing the new PVC should pay for establishing DLCIs at both switches. This is because it is the party causing the new PVC to be established that is causing the costs and provisioning its customer. E*Spire's suggested surrogate rate of one-half the incremental nonrecurring charge for additional PVCs from U S WEST's tariff is reasonable, given the amount of time required. This charge is \$10 per DLCI.

16. Transport and termination of local frame relay traffic requires reciprocal compensation. Bill and keep is not appropriate given the disparities in the sizes of the networks of E*Spire and U S WEST. As a surrogate, the party initiating the new PVC should pay as a recurring charge the tariffed rate for NNI. No discount is appropriate since this is already a carrier to carrier rate. E*Spire as a carrier can consolidate traffic, which differentiates it from an end user. In addition, the carrier initiating the new PVC shall pay the wholesale rate for advanced services for the remaining portion of the connection,

which includes the UNI and the access link. E•Spire may use U S WEST's rates until it establishes its own, should U S WEST seek to establish a new connection on E•Spire's network.

17. E•Spire should pay compensation for the end user segment of interLATA PVCs. This is not a U S WEST customer as E•Spire suggests, but rather E•Spire's customer using U S WEST's facilities. E•Spire should pay U S WEST based on the wholesale discount for this portion of the transmission.

18. Concerning the surrogate rates for transport and termination of local traffic and the establishment of DLCIs, U S WEST will be ordered to file permanent rates for the transport and termination of intraLATA traffic and the establishment of DLCIs within three months of the effective date of this order.

II. ORDER

A. The Commission Orders That:

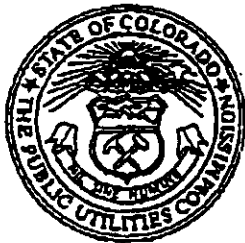
1. U S WEST Communications, Inc., shall modify its interconnection agreement with the petitioners by allowing for interconnection of frame relay networks under the terms and conditions set forth above. The parties shall execute such a modification to their agreement and file it with the Commission for approval within 20 days of the effective date of a final order in this docket.

2. U S WEST Communications, Inc., shall file new tariffs for the transport and termination of local frame relay traffic and the establishment of data link connection identifiers within three months of the effective date of this Order.

3. This Order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 29, 1998.

(3 8 2 2)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT J. HIX

VINCENT MAJKOWSKI

R. BRENT ALDERFER

Commissioners

ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "Bruce N. Smith".

Bruce N. Smith
Director

Decision No. C99-534

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 98A-319T

IN THE MATTER OF PETITION OF E.SPIRE COMMUNICATIONS, INC AND
ACSI LOCAL SWITCHED SERVES DBA E.SPIRE FOR ARBITRATION OF
AN AMENDMENT TO AN INTERCONNECTION AGREEMENT WITH U S WEST
COMMUNICATIONS, INC. PURSUANT TO SECTION 252(B) OF THE TELE-
COMMUNICATIONS ACT OF 1996.

RULING ON APPLICATIONS FOR APPROVAL
OF PROPOSED AMENDMENT
TO INTERCONNECTION AGREEMENT

Mailed Date: May 25, 1999
Adopted Date: May 12, 1999

I. BY THE COMMISSION

A. Statement

This matter comes before the Commission for consideration of the Application for Approval of Proposed Amended Interconnection Agreement filed by e.spire Communications, Inc. ("e.spire"), on April 7, 1999, and the Application for Approval of Amendment to Interconnection Agreement filed by U S WEST Communications, Inc. ("USWC"), also on April 7, 1999. The applications request that we approve proposed amendments to the existing interconnection agreement between e.spire and USWC. The parties did not agree on the proposed amendments. There are four points of contention: (1) the rates and charges applicable to interstate frame relay traffic; (2) whether e.spire is obli-

fully to agree on a revised interconnection agreement, each submitted a separate application.

2. The first dispute between the parties concerns the applicability of the amended interconnection agreement to interstate frame relay traffic. e.spire's proposed provision states that the terms and conditions set forth in the amended agreement apply whether the interconnection is used to support intrastate or interstate PVCs. USWC's proposal states that the contract's provisions apply only to the transport and termination of intrastate frame relay traffic; the rates, terms, and conditions for interstate frame relay service will continue to be those established by tariffs filed with the Federal Communications Commission ("FCC").

3. USWC suggests that the Commission lacks the authority to establish rates, terms, and conditions for interconnection used to support the establishment of interstate PVCs. This argument is based upon the provisions 47 U.S.C. § 251(g). That statute applies to the provision of exchange access to providers such as interexchange carriers, when those carriers seek access for the purpose of terminating their own traffic. *Comptel v. Federal Communications Commission*, 117 F.3d 1068 (8th Cir. 1997). Accord: *First Report and Order*, 11 FCC Rcd 15, paragraph 191 (FCC 1996). To the extent USWC contends that we lack the authority to establish the terms and conditions of

"e.spire must also pay for the NNI port on U S WEST's switch." However, e.spire correctly points out that the quoted statement was made with reference to interLATA connections; Paragraph J(6)(a) of the amended interconnection agreement concerns intraLATA frame relay traffic. e.spire is also correct that its proposed language is consistent with the directives entered in Decision Nos. C98-1057 and C98-1286.

7. The third controversy involves Paragraphs J(6)(c) and (g) of the amended interconnection agreement. These provisions relate to determining which party initiates a new PVC. In Decision Nos. C98-1057 and C98-1286, we directed that transport and termination of frame relay traffic requires reciprocal compensation. As a surrogate for such compensation, we directed that "the party initiating the new PVC" pay as a recurring charge the tariffed rate for NNI. e.spire now suggests contractual language that, absent clear evidence that both parties' end-users do not consent to the establishment of a PVC over the interconnection, both parties shall be deemed to be the "party initiating a new PVC" (for bi-directional intraLATA PVCs).

8. We agree with USWC that its proposal is the one consistent with our prior decisions in this docket. Further, we agree that it should be practical to determine who initiates a PVC. For these reasons, USWC's proposed contract language will be included in the amended interconnection agreement.

II. ORDER

A. The Commission Orders That:

1. The Application for Approval of Proposed Amended Interconnection Agreement filed by e.spire Communications, Inc., on April 7, 1999, and the Application for Approval of Amendment to Interconnection Agreement filed by U S WEST Communications, Inc. on April 7, 1999 are each denied.

2. Within 15 days of the effective date of this Order, e.spire Communications, Inc., and U S WEST Communications, Inc., shall jointly file an application for approval of an interconnection agreement incorporating the terms approved in the above discussion. The applications filed on April 7, 1999 by the parties reflected agreement on a number of provisions. Those provisions shall also be incorporated into the new agreement.

3. This Order is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
May 12, 1999.

Decision No. C99-748

BEFORE THE PUBLIC UTILITIES COMMI:

DOCKET NO. 98A-319T

IN THE MATTER OF PETITION OF E.SPIRE COMMUNICATIONS, INC AND
ACSI LOCAL SWITCHED SERVICES DBA E.SPIRE FOR ARBITRATION WITH
US WEST COMMUNICATIONS PURSUANT TO SECTION 252(B) OF THE
TELECOMMUNICATIONS ACT OF 1996.

RULING ON APPLICATION FOR REHEARING,
REARGUMENT, OR RECONSIDERATION

Mailed Date: July 12, 1999

Adopted Date: July 8, 1999

I. BY THE COMMISSION

A. Statement

This matter comes before the Commission for consideration of e.spire Communications, Inc.'s ("e.spire") application for rehearing, reargument, or reconsideration ("RRR"). e.spire requests that we reconsider and modify Decision No. C99-534 where we arbitrated proposed amendments to the existing interconnection agreement between e.spire and U S WEST Communications, Inc. ("USWC"). Now being duly advised, we deny the application.

B. Discussion

1. This docket concerns e.spire's petition for Commission arbitration of interconnection disputes with USWC under the provisions of 47 U.S.C. § 252 of the Telecommunications Act of 1996. e.spire requested that USWC be ordered to interconnect

its Frame Relay Network with e.spire's Frame Relay Network. In Decision Nos. C98-1057, C98-1286, C99-125, and C99-543 we ordered such interconnection on the terms and conditions specified there.

2. Decision No. C99-543 ruled on specific proposed amendments to the existing interconnection agreement between e.spire and USWC. The parties did not agree on four proposed amendments: (1) the rates and charges applicable to interstate frame relay traffic; (2) whether e.spire is obligated to pay separately for the Network to Network Interface ("NNI") port on USWC's switch with respect to intraLATA traffic; (3) what are e.spire's payment obligations for the NNI port access on USWC's switch with respect to interLATA traffic; and (4) which party initiates a Permanent Virtual Circuit ("PVC") with respect to NNI termination charge payments.

3. With the exception of Issue No. 4 (not addressed in this RRR), the issues dealt exclusively with rate and charge elements of intraLATA traffic versus interstate/interLATA traffic. Generally, the Commission consistently found in favor of those proposed amendments that segregated interstate/interLATA traffic from intraLATA traffic and allowed costs associated with the termination of the interstate/interLATA traffic to be properly recouped by USWC. As such, we ordered that language be incorporated into the interconnection agreement directing that:

(1) e.spire pay interstate, Federal Communications Commission-

tariffed rates applicable to interstate frame relay traffic; (2) e.spire is not obligated to pay for the NNI port access on USWC's switch for traffic intraLATA in nature; and (3) e.spire is obligated to pay for the NNI port on USWC's switch at the tariffed NNI port access rate for interLATA traffic.

4. In its application for RRR, e.spire suggests that the Commission erred, with respect to interstate traffic, by denying e.spire entitlement "to Section 252(d)(1) pricing for the Section 251(c)(2) interconnection." e.spire states that such denial was based on the Commission's focus on the fact of e.spire providing exchange access to itself, rather than to other frame relay providers. e.spire cites the Federal Communications Commission ("FCC") First Report and Order, Paragraph 191 as support for the claim that "a carrier providing either exchange access or telephone exchange service to others, may not be charged interstate or intrastate access charges for elements or interconnection." e.spire's conclusion on this point is that "the Commission should reconsider its Decision and hold that the interLATA pricing provisions in the proposed amendment apply whether the PVCs carried over the interconnection are intrastate or interstate" (emphasis added).

5. The Commission rejects this argument. In the footnote to the FCC First Report and Order Paragraph 191, the

language references Paragraph 176 of the Report and Order. The footnote clarifies the FCC's view of interconnection:

We conclude that the term "interconnection" under section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic. Including the transport and termination of traffic within the meaning of section 251(c)(2) would result in reading out of the statute the duty of all LECs to establish "reciprocal compensation arrangements for the transport and termination of telecommunications" under 251(b)(5)...[emphasis added]

This statement makes clear: that interconnection does not include any mandatory waiver of compensation, for the transport and termination of traffic between the two interconnected networks by either of the involved parties. Establishment of reciprocal compensation procedures is the duty of both parties. It is thus logical that, in the absence of such reciprocally compensable traffic, the costs of transport and termination of traffic will be borne by the party originating the traffic.

6. This means that all interLATA or interstate traffic originating outside of USWC's frame relay network is not reciprocally compensable, and USWC would be forced to forego cost recovery for transport and termination. This is not the FCC's intent in its First Report and Order, which unequivocally states that interconnection does not include or preclude mechanisms for the recovery of transport and termination costs.

7. In our previous orders in this docket, we have properly set forth the mechanisms for traffic subject

to reciprocal compensation, traffic that is intraLATA in nature. Furthermore, we have consistently distinguished interstate/interLATA traffic from intraLATA traffic throughout the course of the arbitration. The former is traffic to which reciprocal compensation does not apply. Thus, we have chosen USWC's language for the interconnection agreement. That language follows this concept: Interstate frame relay tariff rates are applicable to interstate frame relay traffic; interLATA NNI port access tariff rates apply to interLATA traffic.

8. The e.spire application for RRR next asserts that the Commission's decision regarding interLATA traffic was flawed in regard to the Commission finding "that the U S WEST tariffed NNIT rate is the appropriate permanent rate for interconnections over which interLATA frame relay traffic is loaded." e.spire states that this contradicts an earlier ruling in this docket, Decision No. C98-1286, where the Commission found that USWC tariffed rates do not necessarily meet § 252(d)(1) pricing standards, which include a cost-based requirement for network elements rates utilized in § 251 interconnections. e.spire desires that "the tariffed NNIT rate...serve as a surrogate rate only until such time as permanent, cost-based rates are established" by the updated frame relay cost study being performed by USWC as ordered by the Commission in Decision No. C98-1286.

9. Again, we deny the argument of e.spire. For the reasons described above, interLATA traffic is not subject to reciprocal compensation mechanisms, and it is external to any reciprocal compensation process agreed upon by the interconnecting parties. As Commission Decision No. C98-1286 states in Paragraph B.2., the cost study being performed by USWC for establishment of reciprocal compensation was meant for the filing of "...proposed permanent rates for the transport and termination of local Frame Relay traffic and the establishment of data link connection identifiers..." (emphasis added). "Local" was clearly meant to exclude both interstate and interLATA traffic.

10. We reiterate comments made in Decision Nos. C98-1057 and C99-534 which make it clear that the Commission believed that on an interLATA basis the NNI rates are entirely appropriate to this interconnection. These rates reflect a carrier-to-carrier (i.e., inherently discounted) rate and no discount or true-up process is appropriate.

II. ORDER

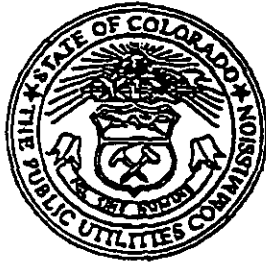
A. The Commission Orders That:

1. The application for rehearing, reargument, or reconsideration filed by e.spire Communications, Inc., on June 14, 1999 is denied.

2. This Order is effective on its Mailed Date.

A. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 8, 1999.

(SEAL)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT J. HIX

VINCENT MAJKOWSKI

RAYMOND L. GIFFORD

ATTEST: A TRUE COPY

Bruce N. Smith

Bruce N. Smith
Director

Commissioners